

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GERISHA THOMPSON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TARISHA L. CRAWFORD,

Respondent-Appellant,

and

GERMAINE THOMPSON,

Respondent.

In the Matter of NYRESE CLEVELAND, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TARISHA L. CRAWFORD,

Respondent-Appellant,

and

SYLVESTOR CLEVELAND,

Respondent.

UNPUBLISHED

April 13, 2006

No. 265233

Kent Circuit Court

Family Division

LC No. 04-051508-NA

No. 265234

Kent Circuit Court

Family Division

LC No. 04-051509-NA

In the Matter of GERISHA THOMPSON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GERMAINE THOMPSON,

Respondent-Appellant,

and

TARISHA CRAWFORD,

Respondent.

No. 265410

Kent Circuit Court

Family Division

LC No. 04-051508-NA

Before: Kelly, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

In Docket Nos. 265233 and 265234, respondent Tarisha Crawford appeals of right the trial court's order terminating her parental rights to Gerisha Thompson and Nyrese Cleveland under MCL 712A.19b(3)(c)(i), (g), and (i). In Docket No. 265410, respondent Germaine Thompson appeals as of right the same order terminating his parental rights to Gerisha Thompson under MCL 712A.19b(3)(c)(i) and (g). We affirm.

The trial court took jurisdiction over the minor children in July 2004. Since late 1999 or early 2000, the children had been in guardianship with their maternal great-grandmother, Maxine Armstrong. The guardianship was suspended in April 2004, when Armstrong's health failed. The children were placed in relative and then foster care. Respondents were incarcerated throughout the pendency of the proceedings. Nevertheless, both took advantage of prison programs to further their education, improve parenting skills, deal with substance abuse, and prepare for release. However, parental rights were terminated on August 25, 2005, approximately one month before respondent Thompson's and Crawford's expected parole dates of September 20 and 27, 2005, respectively.

The trial court did not clearly err in finding that the statutory grounds for termination under MCL 712A.19b(3)(c)(i) and (i) for respondent Crawford, and (c)(i) for respondent Thompson, were established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 350-351; 612 NW2d 407 (2000). Once any one ground for termination is established, the trial court must order termination of parental rights unless there is clear evidence that termination is not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 354. The primary conditions leading to adjudication were respondents' incarcerations and termination of

the children's guardianship. At the time of the termination hearing, respondents were still incarcerated, although their expected release dates were close. Earlier, it was anticipated that respondent Crawford might be released as early as April or May 2005. It is not clear from the record why this did not occur.

The requirements of subsection (i) were satisfied with respect to respondent Crawford. She previously had rights to two other children, Kihry Crawford and Nyrisha Cleveland, terminated for serious and chronic neglect or abuse. Efforts to rehabilitate her were unsuccessful.

The requirements of subsection (c)(i) were satisfied with respect to both respondents. Because of their incarceration, respondents were unable to complete many important parts of the PAAs, though they did complete some. Respondents were also unable to obtain suitable housing and employment or visit with the children to reestablish a relationship. While Gerisha expressed strong attachment to and a desire to live with her mother or both parents, the testimony of her therapist and the foster care worker showed that her ideal of a relationship with her mother was fantasy-based. Gerisha had not lived with respondent Crawford for many years, and her contact with respondent Thompson was similarly limited. Nyrese had no bond with either of his parents. Thus, the significant conditions leading to the adjudication continue to exist. Nor is there a reasonable likelihood that these conditions will be rectified within a reasonable time considering the children's age. Respondents had problems with drugs, criminal activity, and stable housing and employment. The evidence showed that, upon their release, they would need at least nine months to a year of stability before the agency would consider returning the children to either respondent's home. This is too long to make the children wait, especially when the evidence showed that the risk to Gerisha's emotional well-being would be higher if parental rights were not terminated and the parents failed to achieve stability than if parental rights were terminated outright.

Furthermore, the evidence did not show that termination of respondents' parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. The children need a permanent, safe, stable, nurturing home, which neither respondent can provide. Consequently, the trial court did not clearly err in terminating respondents' parental rights.

We do wish to point out a legal error in the trial court's opinion concerning the burden of proof. The trial court held that the parents had the burden of proof to show that termination was not in the children's best interests. In fact, petitioner bears the burden of proof on this issue. No provision of the statute and no opinion of the Supreme Court assigns any burden to the respondent-parent. In *Trejo, supra* at 365, the Court held that if petitioner proves by clear and convincing evidence at least one ground for termination, the court must terminate parental rights "unless the court finds that termination is clearly not in the child's best interests." The emphasis is on what the record contains, not who introduces the evidence or which party proves what. According to *Trejo*, the parent does not even have a burden to produce evidence of best interests. Thus, this evidence could come from a psychological evaluation or a caseworker's testimony, for example. However, the trial judge's error was harmless because the record contained clear and convincing evidence that termination would not be clearly contrary to the best interests of either minor child.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Michael J. Talbot